

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/645,079
Inventor(s) : Erik John Hasenoehrl
Filed : August 21, 2003
Art Unit : 1615
Examiner : Hasan Syed Ahmed
Docket No. : 9343
Confirmation No. : 6936
Customer No. : 27752
Title : Effervescent Personal Cleansing Articles

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Brief is filed pursuant to the appeal from the decision communicated in the Office Action mailed on June 20, 2008. A Notice of Appeal is being submitted together with this brief.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1 and 3-25 are pending in the present application. Claims 14-25 were withdrawn in response to a restriction requirement. Claims 1 and 3-13 are rejected. Claims 1 and 3-13 are appealed. A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

STATUS OF AMENDMENTS

Amendment was filed on November 17, 2006; this amendment was entered.

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SUMMARY OF CLAIMED SUBJECT MATTER

The present invention, as recited in Claim 1, relates to an article for cleansing body surfaces (page 3, line 10). The article comprises an effervescent composition comprising solid alkaline and acidic materials (page 3, lines 11-15; page 7, line 33 to page 8, line 31) and a liquid-permeable laminate (page 3, lines 11-15; page 4, line 11 to page 7, line 32). The liquid-permeable laminate of the present invention comprises a plurality of layers (page 4, line 11 to page 7, line 32). The liquid-permeable laminate has a first layer that comprises a web (page 4, line 11 to page 7, line 32; page 6, 19-29) and a second layer, in contact with the first layer, that comprises a plurality of webs (page 4, line 11 to page 7, line 32; page 6, line 30 to page 7, line 32). The effervescent composition is present between the webs that comprise the second layer (page 4, line 11 to page 7, line 32). The web of the first layer comprises a lathering surfactant distributed over the first layer on the surface of the layer's web opposite the contact surfaces of the first layer and the second layer (page 11, line 8 to line 10).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Are claims 1 and 3-25 obvious over the combination of Slavtcheff, et al. (U.S. Patent No. 6,451,331) (hereinafter referred to as "Slavtcheff") in view of Bries, et al. (U.S. Patent No. 5,110,843) (hereinafter referred to as "Bries")?

ARGUMENTS

Claims 1 and 3-25 are not obvious over Slavtcheff in view of Bries

The Appellants respectfully traverse the rejection.

In a recent case regarding the appropriate standard for establishing obviousness, the Supreme Court stated:

"[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. Although common sense directs one to look with care at a patent application that claims as innovation the combination of two known devices according to their established functions, it can be important to identify a reason that would have prompted a person of ordinary skill in

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the relevant field to combine the elements in a way claimed new invention does. This is so because inventions in most, if not all, instances rely upon building blocks since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense is already known.”
KSR International Co. v. Teleflex, Inc. 127 S. Ct. 1727, 1741 (2007)
emphasis added

The Appellants respectfully submit that the action as a whole does not clearly articulate facts and reasons why the claimed invention “as a whole” would have been obvious to a hypothetical person having ordinary skill in the art at least as of the claimed invention’s effective filing date. Specifically, the action does not articulate findings of fact relating to (1) the scope and content of the prior art, and (2) the difference between the claimed invention and the applied prior art. Still further, while the action appears to rationalize its conclusion of obviousness, the action does not articulate facts sufficient to support the asserted rationale. See MPEP 2143. The action, therefore, does not set forth a *prima facie* case of obviousness. Accordingly, the Appellants respectfully traverse the rejection, and request reconsideration and withdrawal of the rejection.

The claimed subject matter relates to an article for cleansing body surfaces. The article comprises an effervescent composition that comprises solid alkaline and acidic materials and a liquid-permeable laminate. The liquid-permeable laminate of the present invention comprises a plurality of layers. More specifically, the liquid-permeable laminate has a first layer that includes a web and a second layer (in contact with the first layer) that includes a plurality of webs. The effervescent composition is present between the webs that make up the second layer. A lathering surfactant is distributed over the web surface of the first layer that is opposite the surface (of the first layer) in contact with the second layer. The laminate and its layer are illustrated in the drawing (“Fig. 3”) below:

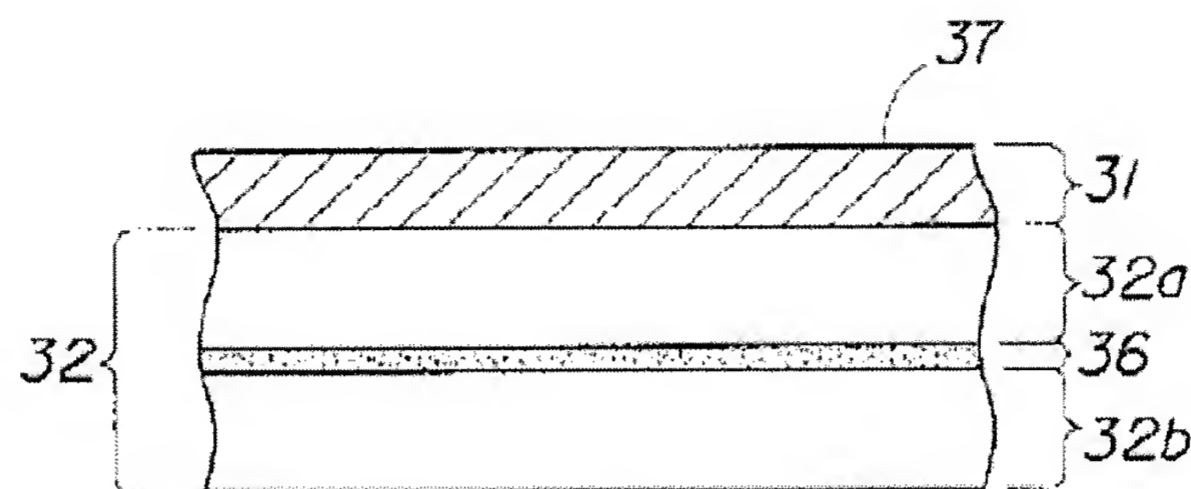


Fig. 3

As shown in Fig. 3, the first layer 31 is in communication over its entire surface with the top surface of a second layer 32. In Fig. 3, the surfactants 37 are primarily located on the first layer 31, specifically on the surface of the web opposite the contacting surfaces of the first and second layers 31 and 32, respectively, of the laminate. In Fig. 3, the second layer 32 comprises two webs 32a and 32b, wherein the effervescent composition 36 is placed between webs 32a and 32b.

By placing the effervescent composition between the webs of the second layer, the effervescent composition does not agglomerate and/or cake, the effervescent composition therefore remains evenly spread over the web surface to throughout the laminate and facilitates consistent and steady activity of the article when wetted. Accordingly, it is an object of the present invention is to eliminate the dry flowing powders from the gas generating chemistry which inhibit optimum foaming and lathering. To achieve this, the surfactant is placed in a position other than with the gas generating chemistry so that the aggregating or caking of the gas generating chemistry does not inhibit the generation of gas and transfer of water to surfactants so that there is optimum foaming. Thus, the lathering surfactant and the effervescent composition are in separate locations within the cleansing article.

The Slavtcheff reference describes “a swiping article which includes an effervescent cleanser composition held within a sachet” (See Slavtcheff, abstract). The surfactant and the effervescent composition in the article of Slavtcheff are positioned together within the sachet (See Slavtcheff column 4, 15-17 and 65-67, Examples 1-6, and Claims 1 and 5).

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The Bries reference describes multilayered polyurethane foam having a detergent or cleaner impregnated in an inner layer (*See* Bries, column 5, lines 49-52).

The combination of Slavtcheff in view of Bries does not teach or suggest all of the features recited in rejected independent claim 1 (or any claims depending from 1) and, therefore, does not establish a *prima facie* case of obviousness (*See* MPEP 2143.03). Specifically, Slavtcheff in view of Bries does not teach or suggest a cleansing article that comprises an effervescent composition and a lathering surfactant which are in separate locations within the cleansing article. The surfactant and the effervescent composition in the article of Slavtcheff are positioned together within the sachet (*See* Slavtcheff column 4, 15-17 and 65-67, Examples 1-6, and Claims 1 and 5). Bries teaches articles multilayered polyurethane foam having a detergent or cleaner impregnated in an inner layer (*See* Bries, column 5, lines 49-52). Bries does not teach another composition, such as an effervescent composition, in addition to the detergent or cleaner in a separate location within the article.

The Office Action supports the § 103(a) rejection of independent claim 1 (and claims 3-5, 8 and 10-13 dependent there from) by the rationale that a person having ordinary skill in the art would have been motivated to combine the prior art to achieve the claimed invention and there would have been a reasonable expectation of success. (*See* the Office Action at page 4).

The action does not articulate any findings that there was some teaching, suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the Slavtcheff patent or combine the teachings with those in the Bries patent. Specifically, the Office Action does not set forth any findings of a suggestion in either the Slavtcheff or Bries patents to modify the cleansing article of the Slavtcheff patent to have two compositions disposed in separate areas/parts of the cleaning article. Absent such a finding, the asserted rationale of the § 103 rejection does not apply. The Appellants respectfully submit that one skilled in the art having no knowledge of the Appellants disclosure and having read the disclosure of the Slavcheff and Bries patent, would not be motivated to make a cleansing article that includes an effervescent composition and a lathering surfactant, disposed in separate locations within the article. The Appellants respectfully submit that the Bries

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patent would not motivate a skilled artisan to separate the surfactant and effervescent composition of Slavtcheff, because Bries does not teach an article that comprises two compositions in separate locations within an article. The Appellants respectfully submit that the motivation to modify Slavtcheff disclosure can only be found in the applicant's disclosure. Moreover, the mere fact that the Slavtcheff patent's disclosure can be modified with Bries does not render the resultant modification obvious unless the result would have been predictable to the ordinarily skilled artisan. *See KSR Int'l S.Ct.* at 1740. The Office Action presents no such findings.

Each of the dependent claims 6, 7, and 9 appear to have been rejected under § 103(a) as being obvious over the Slavtcheff patent, alone, whereas dependent claim 8 is rejected over a combination of Slavcheff and Bries. Because the Appellants have argued above, that the combination does not render the claims obvious, the Appellants respectfully submit that the Slavtcheff reference alone can render the dependent claims 6, 7, and 9 obvious.

SUMMARY

In view of all of the above, the Appellants respectfully submit that the claimed invention is unobvious. The Appellants respectfully request that the rejections of record be withdrawn.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY



Signature

Bridget Murray
Registration No. 52,555
(513) 983-9357

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CLAIMS APPENDIX

Claim 1. An article for cleansing body surfaces, the article comprising:

- a) an effervescent composition comprising solid alkaline and acidic materials;
and
- b) a liquid-permeable laminate comprising a plurality of layers, said laminate having a first layer comprising a web and a second layer, in contact with said first layer, comprising a plurality of webs wherein said effervescent composition is present between the webs comprising said second layer;
wherein said web of said first layer comprises a lathering surfactant distributed over said first layer on the surface of said layer's web opposite the contact surfaces of said first layer and said second layer.

Claim 3. The article of claim 1 where the lathering surfactant is selected from the group consisting of anionic lathering surfactants, nonionic lather surfactants, amphoteric lathering surfactants and mixtures thereof.

Claim 4. The article of claim 3 wherein said article comprises from about 0.01% to 1500%, by weight of said laminate, of said lathering surfactant.

Claim 5. The article of claim 4 wherein the anionic lathering surfactants are selected from the group consisting of sarcosinates, sulfates, isethionates, taurates, phosphates, lactylates, glutamates, and mixtures thereof.

Claim 6. The article of claim 5 wherein said second layer's webs are affixed to one another at the contacting surfaces of the webs by attachment means selected from the group consisting of bonding agents, sonic welding, heat fusing, mechanical compression and combinations thereof.

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Claim 7. The article of claim 6 wherein said bonding agents are selected from the group consisting of polyethylene glycol, polyethylene and mixtures thereof.

Claim 8. The article of claim 7 wherein said article has a third layer attached to said second layer at the surface of said second layer opposite the contacting surface of said first layer and said second layer.

Claim 9. The article of claim 8 wherein the article's layers are bonded together about the perimeter of said article.

Claim 10. The article of claim 9 wherein said effervescing composition is dry and comprises from about 1 to about 80% of the total weight of the effervescing composition an alkaline material selected from the group consisting of anhydrous salts of carbonates and bicarbonates; alkaline peroxides and azides and mixtures thereof.

Claim 11. The article of claim 10 wherein said alkaline material is selected from the group consisting sodium bicarbonate, potassium bicarbonate, sodium carbonate, potassium carbonate and mixtures thereof.

Claim 12. The article of claim 11 wherein said effervescing composition comprises from about 0.5% to about 80% of the total weight of the effervescing composition an acidic material is selected from the group consisting of C₂ to C₂₀ organic mono- and poly-carboxylic acids; C₂ to C₂₀ organophosphorus acids; C₂ to C₂₀ organosulfur acids, toluene sulfonic acid; peroxides, lactones and mixtures thereof.

Claim 13. The article of claim 12 wherein said carboxylic acids are selected from the group consisting of adipic, glutaric, succinic, tartaric, malic, maleic, lactic, salicylic, citric acids and mixtures thereof.

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EVIDENCE APPENDIX

None

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RELATED PROCEEDINGS APPENDIX

None